



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 12, 2019

Burke Costanza & Carberry LLC
Jon A. Schmaltz, Partner
156 S. Washington St.
Valparaiso, IN 46383

VIA EMAIL: schmaltz@bcclegal.com

Re: Informal Inquiry 19-INF-19; Timeliness

Dear Mr. Schmaltz,

This is in response to the informal inquiry you submitted to our office and received on September 26, 2019. Specifically, you inquire as to the propriety of a response pursuant to a request submitted to the Town of Ogden Dunes.

BACKGROUND

On August 13, 2019, you submitted, on behalf of a client, a public records request to the Building Commissioner, Assistant Building Commissioner, and the Clerk-Treasurer for the Town of Ogden Dunes seeking records related to a specific property. The request can be summed up as follows:

1. All application permits for a period of approximately three years on the property and the outcome of said applications.
2. All correspondence related to Number 1 (and stop work orders) between any Town employees, officials, or third party, by whatever name designated.
3. Any work product related to the property.
4. A privilege log if any redactions or omissions were effectuated.

You contend the town failed to respond to your request within seven days, which you consider a violation of the Access to Public Records Act. You sought a status update on September 4, 2019. The town's attorney confirmed receipt of the records request and indicated the town is working on the request, however, as of the time of the filing of your inquiry, you had not received any responsive documents.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. 5

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *Id.* The Town of Ogden Dunes is a public agency for the purposes of APRA; and thus, subject to the act’s requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the town’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

1.1 Acknowledgment of a Request

Under APRA, a request for records is considered denied after seven days elapse without a response from the date the public agency receives the request. *See* Ind. Code § 5-14-3-9(b)(2). In this instance, there is evidence the Ogden Dunes received the request because the Town Attorney subsequently confirmed receipt.

When a request is overlooked for a certain unreasonable period of time, it is considered denied. Furthermore, a denial of a written records request must be accompanied by a written denial and statutory justification for the denial. *See* Ind. Code § 5-14-3-9(d)(2).

It does not appear as if the town intended to disregard your request, but indeed failed to respond within seven days thereby constituting a technical violation of the APRA. This could be, as is often the case, an administrative oversight. Nonetheless, the town indicated it was working on your request.

1.2 Reasonable Timeliness

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency’s disclosable public records. Ind. Code § 5-14-3-3(a).

Toward that end, within a reasonable time after the request is received by the agency, the public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.

Here, you assert that the town has exceeded the bounds of reason and is in violation of the APRA for taking the amount of time it has to respond. This office is required to liberally construe the provisions of APRA as instructed by the legislature. As a result, this office regularly interprets APRA’s reasonable time standard, codified at Indiana Code

section 5-14-3-3(b). The determination of what is a reasonable time for production of records therefore depends upon the public records requested and circumstances surrounding the request. Although reasonable time is not defined in the APRA or by the courts, it is a standard which is addressed on a case-by-case basis.

The factors affecting the reasonableness of timely production of documents include but are not limited to: the size of the public agency; the size of the request; the number of pending requests; the complexity of the request; and any other operational considerations that may reasonably affect the public records process.

Without the benefit of a response from Ogden Dunes, it is impossible to ascertain which, if any, of these factors apply. What I can determine is that your request, as it pertains to the communication portions, may exceed the limitations of reasonable particularity as has been historically interpreted by this office.

While reasonable particularity is often challenging to qualify, this office has consistently recognized that requests for emails (and text messages, etc.) —in order to be reasonably particular—must identify, at minimum, the following four items: (1) Named sender; (2) Named recipient; (3) Time frame of six months or less; and (4) Particularized subject matter or set of search terms.

These parameters are not etched in stone, and in fact, can be quite fungible based on the circumstances. But they are a starting point for a narrowly crafted request that is not so onerous for the agency that a disproportionate amount of resources is expended just *finding* the records, let alone preparing them for production.

Point being that if an agency accepts a request that includes correspondence from an entire municipality's staff, a request may take longer than usual to process.

That is not to say large, potentially voluminous requests are out-of-bounds. In fact, I have counseled public agencies to take reasonable steps to inform requesters of status update and, when practicable, provide records on a piecemeal basis if a large number of documents is implicated in a request. Whether the Ogden Dunes has done so is unknown.

At the time of your inquiry to this office, approximately six weeks had passed since your initial request to the town. That seems like a sufficient amount of time to provide you, at least partially, a portion of the records requested. Again, this is without the benefit of the town's response, and I will withhold ultimate judgment as this is not a formal complaint proceeding.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor